



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

**[Docket Number USCG-2021-0804]**

**RIN 1625-AA08**

### **Special Local Regulation; San Diego Bay, San Diego, CA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary special local regulation (SLR) in the navigable waters of San Diego Bay, California during the Baja Ha-Ha XXVII Pre-Rally Parade marine event. This regulation is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the parade, and general users of the waterway during the event, which will be held on November 1, 2021. This special local regulation will temporarily prohibit persons and vessels from entering into, transiting through, anchoring, blocking, or loitering within the event area unless authorized by the Captain of the Port San Diego or a designated representative.

**DATES:** This rule is effective from 8:30 a.m. to 11:30 a.m. on November 1, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0804 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S.

Coast Guard Sector San Diego, CA; telephone (619) 278-7656, e-mail

D11MarineEventsSD@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because we must establish this special local regulation by November 1, 2021. The event sponsor did not notify the Coast Guard of the official date of the event until September 12, 2021. Therefore, it is impracticable to publish an NPRM because we lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule. This regulation is necessary to ensure the safety of life on the navigable waters of San Diego Bay during the marine event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest because action is needed to ensure the safety of life on the navigable waters of San Diego Bay during the marine event on November 1, 2021.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1236). The Captain of the Port Sector San Diego (COTP) has determined that the large number of vessels associated with the Baja Ha-Ha XXVII Pre-Rally Parade marine event on November 1, 2021, poses a potential safety concern in the regulated area. This rule is needed to protect persons, vessels, and the marine environment in the navigable waters of San Diego Bay during the marine event.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation from 8:30 a.m. to 11:30 a.m. on November 1, 2021. This special local regulation will cover all navigable waters, from surface to bottom, on a pre-determined course within San Diego Bay, California, beginning at the starting point of the event in South San Diego Bay, proceeding northwest to Harbor Island, then southwest to Shelter Island, and finishing at the starting point of the rally outside of the San Diego Bay channel entrance. The duration of the temporary special local regulation is intended to ensure the safety of vessels, personnel, and the marine environment in these navigable waters during the scheduled marine event. No vessel or person will be permitted to enter the regulated area without obtaining permission from the COTP or a designated representative. The regulatory text provides information on how to contact the COTP or a designated representative for permission to transit the area. When in the regulated area, persons must comply with all lawful orders or directions given to them by the COTP or designated representative. Additionally, the COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners or by on-scene designated representatives.

### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these

statutes and Executive orders, and we discuss First Amendment rights of protestors.

*A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day of the regulated area. The affected portion of the navigable waterway in San Diego Bay will be of very limited duration, during morning hours when vessel traffic is historically low and is necessary for safety of life of participants in the marine event. Moreover, the Coast Guard will issue a Local Notice to Mariners and a Safety Marine Information Broadcast over Channel 22A about the regulated area.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated area may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation that will limit access to certain areas within San Diego Bay, from 8:30 a.m. until 11:30 a.m on November 1, 2021. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

**PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 46 U.S.C. 70041; 33 CFR 1.05-1.

2. Add § 100.T11-081 to read as follows:

**§ 100.T11-081 Baja Ha-Ha XXVII Pre-Rally Parade, San Diego, California.**

(a) *Regulated area.* The regulations in this section apply to the following area: all navigable waters, from surface to bottom, on a pre-determined course within San Diego Bay, California, beginning at the starting point of the event in South San Diego Bay, proceeding northwest to Harbor Island, then southwest to Shelter Island, and finishing at the starting point of the rally outside of the San Diego Bay channel entrance.

(b) *Definitions.* As used in this section—

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Diego (COTP) in the enforcement of the regulations in this section.

*Participant* means all persons and vessels registered with the event sponsor as a participants in the boat parade.

(c) *Regulations.* (1) All non-participants are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area described in paragraph (a) of this section unless authorized by the Captain of the Port San Diego or their designated representative.

(2) To seek permission to enter, contact the the COTP or a designated representative. They may be contacted on VHF-FM Channel 21A or by telephone at 619-278-7033. Those in the regulated area must comply with all lawful orders or

directions given to them by the COTP or designated representative.

(3) The COTP will provide notice of the regulated area through advanced notice via broadcast notice to mariners or by on-scene designated representatives.

(d) *Enforcement period.* This section will be enforced from 8:30 a.m. until 11:30 a.m., on November 1, 2021.

Dated: October 25, 2021.

T. J. Barelli,

Captain, U.S. Coast Guard,

Captain of the Port San Diego.

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